BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:	:	
	:	
	:	
United States Department of the Army	:	
	:	
and	:	
	:	
Alliant Techsystems Operations LLC	:	
	:	
Respondents,	:	
	:	Docket No. CAA/CWA/CERC/RCRA-03-2017-0164
	:	
Radford Army Ammunition Plant Radford, Virginia	:	
	:	
Facility.	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), the U.S. Department of the Army ("Army") and Alliant Techsystems Operations LLC ("ATK"). The Army and ATK are collectively referenced herein as Respondents. This CA is entered into pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6928(a) and (g), Section 309(g) of the Clean Water Act, as amended ("CWA"), 33 U.S.C. § 1319(g), Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9609, Sections 113 and 118(a) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7413 and 7418(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

Regulatory Background

RCRA Background

This CA and the accompanying Final Order (collectively "CAFO") resolve violations of the RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939f, and regulations in the authorized Virginia hazardous waste program in connection with Radford Army Ammunition Plant located in Radford, Virginia. Virginia initially received final authorization for its hazardous waste regulations, the Virginia Hazardous Waste Management Regulations ("VaHWMR"), 9 VAC 20-60-12 *et seq*., on December 4, 1984, effective December 18, 1984 (49 Fed. Reg. 47391). EPA reauthorized Virginia's regulatory program on June 14, 1993, effective August 13, 1993 (58 Fed. Reg. 32855); on July 31, 2000, effective September 29, 2000 (65 Fed. Reg. 46606), on June 20, 2003, effective June 20, 2003 (68 Fed. Reg. 36925); on May 10, 2006, effective July 10, 2006 (71 Fed. Reg. 27204); and on July 30, 2008, effective July 30, 2008 (73 Fed. Reg. 44168). The VaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 2004 Code of Federal Regulations by reference. *See* 9 VAC 20-60-18.

Notice to the State

Respondents were previously notified regarding the RCRA allegations recited herein under cover letter dated January 26, 2015. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the Commonwealth of Virginia of EPA's intent to enter into a CAFO with Respondent resolving the RCRA violations set forth herein.

CWA Background

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants," as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), from a point source into the waters of the United States by any person except in accordance with certain sections of the CWA, or in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA (or a state that has a permit program authorized pursuant to Section 402(b) of the CWA, 42 U.S.C. § 1342(b)) may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such a permit, including effluent limitations, but only upon compliance with applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or under such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

Section 402(k) of the CWA, 33 U.S.C. § 1342(k), provides that compliance with the terms and conditions of a permit issued pursuant to that section shall be deemed compliance with, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and

concentration of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the United States. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to states that meet certain requirements. The Commonwealth of Virginia is authorized by the Administrator of EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for discharges into navigable waters within its jurisdiction. The Virginia Department of Environmental Quality ("VADEQ") is the "approval authority" as defined in 40 C.F.R. § 403.3(c).

Section 313 of the CWA, 33 U.S.C. § 1323, requires in relevant part that each department, agency, or instrumentality of the executive, legislative and judicial branches of the Federal Government ("Federal Entities") shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity. Nevertheless, nothing in this CAFO shall be interpreted to constitute a waiver of sovereign immunity for Federal Entities with respect to civil penalties for past violations.

Notice to the State

Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and in addition will mail a copy of this CAFO to the appropriate Virginia official.

CERCLA Regulatory Background

Section 102(a) of the CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which is required to be reported under Section 103(a) of the CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

CAA Regulatory Background

Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI (also referred to as Titles I, IV, V and VI) of the CAA. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70, require that states develop and submit to EPA operating permit programs, and that EPA act to approve or

disapprove each program. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally enforceable. EPA fully approved the Title V operating permit programs for the Commonwealth of Virginia effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to the initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. The Administrator and Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Notice to the State

Respondents were previously notified regarding the CAA allegations recited herein under cover letter dated January 26, 2015. EPA has notified the Commonwealth of Virginia of EPA's intent to enter into a CAFO with Respondent to resolve the CAA violations set forth herein and, in accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), will provide a copy of the CAFO to VADEQ.

General Provisions

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.

2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.

3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondents hereby expressly waive their rights to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order, or any right to confer with the EPA Administrator pursuant to the RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).

5. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.

6. Respondents shall bear their own costs and attorneys' fees.

7. The Army certifies to EPA by its signature herein that, upon investigation, to the best of its knowledge and belief, it is presently in compliance with the specific provisions of the RCRA, the CWA, the CERCLA and the CAA allegedly violated as set forth in this CAFO.

8. The provisions of this CAFO shall be binding upon Complainant and Respondents, their officers, directors, employees, successors, and assigns.

9. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of the RCRA, the CWA, the CERCLA, the CAA, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

10. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.

11. The Army is the owner of the Radford Army Ammunition Plant, off of State Route 114, Radford, Virginia 24141 (the "Facility").

12. Prior to July 1, 2012, and at all times relevant to this CAFO, ATK was the operator of the Facility.

13. EPA conducted an inspection of the Facility on May 16-20, 2011 ("2011 Inspection"), and February 4-12, 2014 ("2014 Inspection").

COUNT I (RCRA SUBTITLE C-OPERATING WITHOUT A PERMIT OR INTERIM STATUS)

14. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

15. The Army is and has been at all times relevant to this CAFO the "owner" of a "facility," as those terms are defined by 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

16. ATK was at all times relevant to this CAFO the "operator" of a "facility," as those terms are defined by 9 VAC 20-60-260, which, with exceptions not relevant to this term,

incorporates by reference 40 C.F.R. § 260.10.

17. The Army is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

18. ATK is a limited liability company and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

19. Respondents were at all times relevant to this CAFO "generators" of, and have engaged in the "storage" in "containers" of, materials that are "solid wastes" and "hazardous wastes" at the Facility, as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous waste referred to herein.

20. Section 3005(a) and (e) of the RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)) provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for such facility or has qualified for interim status.

21. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides that a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, *inter alia*:

    a. The waste is placed in containers and the generator complies with 40 C.F.R. § 265, Subparts I, AA, BB and CC;

    b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

    c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

    d. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts C and D, § 265.16, and § 268.7(a)(5).

22. 9 VAC-20-60-262, which incorporates by reference 40 C.F.R. § 262.34(b), provides that a generator who accumulates hazardous waste for more than 90 days is an operator of a

storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265, and 267, and the permit requirements of 40 C.F.R. Part 270 unless he has been granted an extension to the 90-day period.

Satellite Accumulation

23. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1), provides, in relevant part, that a generator may accumulate as much as 55 gallons of hazardous waste at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste without a permit or interim status provided certain condition are met. These conditions include the requirement that containers holding hazardous waste always be closed during storage, except when it is necessary to add or remove waste, and the requirement that the containers be marked with the words "hazardous waste" or with other words that identify the contents of the containers.

24. At the time of the 2011 EPA Inspection, at locations known to Respondents, but for purposes of this CAFO identified as Buildings A, B, C, D, E and F:
    a. In the Building A, two 3-gallon buckets containing hazardous waste, specifically, waste "slum" samples (generally speaking, a combination of nitroglycerin, triacetin, acetone, and filter paper), although at or near the point of waste generation, were not marked with the words "hazardous waste."
    b. In Building B, hazardous waste was transferred from two unlabeled 20-gallon tubs to "waste tubs" labeled "Hazardous Waste" located in the adjacent room. The two 20-gallon tubs were not marked with the words "hazardous waste." The "waste tubs" were not located at or near the point of waste generation.
    c. In Building C, there was a 20-gallon drum containing hazardous waste, specifically, floor sweeps which, although at or near the point of waste generation, was not closed and to which waste was not being added or removed at the time it was observed.
    d. In Building C, there was a 20-gallon drum containing floor sweepings from spilled material containing 2-nitrodiphenylamine, a 20-gallon fiber drum located in Bay #1 and two 20-gallon fiber drums containing lead located in Bay #3. All of these containers held hazardous waste and were at or near the point of waste generation. None of these containers were closed even though no waste was being added or removed at that time from any of these containers at the time they were observed.
    e. In Building D, there was a 55-gallon drum containing hazardous waste generated from gas tank cleanouts. The drum was located outside the garage, which was not at or near the point of generation. Moreover, the drum was not closed and waste was not being added or removed at the time it was observed.

f. In Building E, two propellant shaving collection containers labeled as "Waste Explosives," which contained hazardous waste, were at or near the point of waste generation, but were open and waste was not being added or removed at the time they were observed.

g. In Building F, there was a container marked with the words "hazardous waste" storing waste propellant lumps. The container was at or near the point of waste generation, but was open and no waste was being added or removed at the time it was observed.

25. For those instances set forth in Paragraph 24, above, Respondents violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1).

26. Because Respondents did not comply with the satellite accumulation requirements, as described in Paragraph 24, above, Respondents failed to satisfy the conditions set forth at 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34, for a generator to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 for the hazardous waste management activities described in Paragraph 24, above.

27. Respondents do not have, and at the time of the violations alleged herein, did not have, a permit or interim status to store the hazardous waste described in Paragraph 24 at the Facility as required by 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

28. Because of the activities alleged in Paragraph 24, above, Respondent violated 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), by operating a hazardous waste storage facility without a permit or interim status.

COUNT II (RCRA-UNIVERSAL WASTE)

29. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

30. 9 VAC 20-60-273 incorporates by reference the definitions of 40 C.F.R. § 273.9, which provides in relevant part the following definition of lamp: "Lamp also referred to as 'universal waste lamp' is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

31. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), requires, in relevant part, that a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

32. At the time of the 2011 EPA Inspection, in Building 450, there was an open box containing thirteen waste lamps, with no means of indicating the length of time that the waste lamps had been accumulated.

33. The Army violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), by not having a means of demonstrating the length of time universal waste had been accumulating with respect to the universal waste lamps referenced in Paragraph 32.

COUNT III (RCRA-UNIVERSAL WASTE)

34. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

35. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), requires, in relevant part, that universal waste lamps be placed in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. In addition, such containers or packages must remain closed.

36. At the time of the 2011 EPA Inspection, there were pieces of waste lamps on the ground outside of Building A-1034.

37. Respondents violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), by not placing the universal waste lamps referenced in Paragraph 36 in containers or packages that were structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

COUNT IV (CWA NPDES PERMIT)

38. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

39. At the time of the 2011 EPA Inspection, the Facility was subject to NPDES Permit No. VA0000248 issued by the Commonwealth of Virginia. This permit was issued with an effective date of June 10, 2010. This permit requires the creation of a Storm Water

Pollution Prevention Plan (SWPPP).

40. NPDES Permit No. VA0000248, Part I, Section F (Site Specific Storm Water Pollution Prevention Plan Requirements), Paragraph 5.c., requires consideration of the following good housekeeping measures for transportation facilities (or their equivalents) in the Facility's SWPPP: the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease. The Facility's SWPPP addresses good housekeeping measures for transportation facilities.

41. At the time of the 2011 EPA Inspection, there were oily pools of stormwater located at the heavy equipment storage lot. At the time of the 2011 EPA Inspection, there were no measures in place to prevent the oily pools of stormwater which were in existence at that time as required by NPDES Permit No. VA0000248, Part I, Section F, Paragraph 5.c and the SWPPP.

42. Respondents did not comply with NPDES Permit No. VA0000248, Part I, Section F, Paragraph 5.c. and the SWPPP it had in effect at the time of the 2011 EPA Inspection, by failing to implement the necessary good housekeeping measures needed to prevent oily pools of stormwater as described in Paragraph 41, above.

COUNT V (CWA NPDES PERMIT)

43. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

44. NPDES Permit No. VA0000248, Part I, Section F (Site Specific Storm Water Pollution Prevention Plan Requirements), Paragraph 3.b.(1)(i), requires that the Facility's SWPPP describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. The Facility's SWPPP addresses good housekeeping measures with respect to oil bearing equipment in switchyard areas.

45. At the time of the 2011 EPA Inspection, there were stains on the ground in the vicinity of four transformers in a switchyard area. At the time of the 2011 EPA Inspection, the Facility had not implemented the necessary good housekeeping measures to address the four leaking transformers as required by NPDES Permit No. VA0000248, Part I, Section F, Paragraph 3.b.(1)(i) and the SWPPP.

46. Respondents did not comply with NPDES Permit No. VA0000248, Part I, Section F, Paragraph 3.b.(1)(i) and the SWPPP it had in effect at the time of the 2011 EPA Inspection by failing to implement the necessary good housekeeping measure needed to

address the leaking transformers as described in Paragraph 45, above.

COUNT VI (CERCLA NOTIFICATION)

47. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

48. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. §§ 302.3.

49. At all times relevant to this CA/FO, Respondents have been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

50. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601 (9), and 40 C.F.R. § 302.3.

51. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

52. On November 22, 2011, the Facility began releasing diethyl ether in quantities above those allowed by a Virginia permit to construct and operate (dated December 21, 2009) at approximately 5:00 AM (the "Release").

53. Diethyl ether, also known as Ethane, 1,1′-oxybis- (Chemical Abstracts Service Registry Numbers 60-29-7), is listed at 40 C.F.R. § 302.4 with an RQ of 100 pounds.

54. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

55. The Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

56. By 8:00 AM on November 22, 2011, the Facility had released approximately 458 pounds of diethyl ether and ultimately, the Facility released a total of 555 pounds of diethyl either by 10:21 AM on November 22, 2011. Respondents notified the NRC of the Release at 10:35 AM on November 22, 2011.

57. Respondents failed to immediately notify the NRC of the Release as soon as Respondents knew or should have known there was a release of a hazardous substance at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

58. Respondents' failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondents are, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT VII (CAA—TITLE V PERMIT—OPACITY-BOILERS)

59. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

60. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans or permits.

61. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70, require that states develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program.

62. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally enforceable.

63. EPA fully approved the Title V operating permit programs for the Commonwealth of Virginia effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. VADEQ is a Permitting Authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4)

64. The Facility received a Title V permit from VADEQ effective on January 15, 2004, with an expiration date of January 15, 2009. The Facility's Title V permit number is VA-20656. Since Respondents submitted a timely and complete Title V renewal application, the Title V permit terms were automatically extended beyond the January 15, 2009 expiration date and these terms were in effect at the time of the 2011 EPA Inspection.

65. Each Respondent is a "person" as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

66. Condition III. (Fuel Burning Equipment Requirements – Boilers PH1 through PH5; Boilers WB1 and WB2) A.(Limitations) 5., which applies to the coal-fired boilers at the Facility, provides: Visible emissions from each of the boiler stacks shall not exceed 20 percent opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent opacity. (9 VAD 5-40-80, 9 VAC 5-40-940 and 9 VAC 5-80-110). This condition is applicable only to those boilers identified in the Title V permit as Boilers PH 1 through PH5 and Boilers WB1 and WB2.

67. For those instances listed on Appendix A to this CAFO, the Facility exceeded the limitation described in Paragraph 66 with respect to Boilers PH1 through PH5. The Facility self-reported these exceedances as part of its Title V monitoring reporting.

68. The Facility violated its Title V operating permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), with respect to opacity limitations set forth in Condition III.A.5. of its Title V permit.

COUNT VIII (CAA—TITLE V PERMIT—OPACITY-OTHER EQUIPMENT)

69. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

70. Condition X.(Facility Wide Conditions) A. (Limitations) 7. of the Facility's Title V permit provides: Visible emissions from the facility, except as specified in sections titled "Fuel Burning Equipment Requirements" and "Process Equipment Requirements" in this permit, shall not exceed 20 percent opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent opacity. (9 VAC 5-40-80 and 9 VAC 5-80-110)

71. For those instances listed on Appendix B to this CAFO, the Facility exceeded the limitation set forth in Paragraph 70 with respect to opacity emissions from the Piccolo stack, the Tank Farm Scrubber stack, and from the Baghouse. The Facility self-reported

these exceedances as part of its Title V monitoring reporting.

72. The Facility violated its Title V operating permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), with respect to opacity limitations set forth in Condition X.A.7. of its Title V permit.

COUNT IX (CAA—TITLE V PERMIT-PROCESS EQUIPMENT REQUIREMENTS)

73. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

74. Condition VII. (Process Equipment Requirements – NC: Nitrocellulose Production) B. (Monitoring) 4. of the Facility's Title V permit provides: The piccolo scrubber shall be equipped with a device to continuously measure the scrubber liquid flow rate. The monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, at a minimum, the manufacturer's written requirements or recommendations. The monitoring device shall be provided with adequate access for inspection and shall be in operation when the scrubber is operating. (9 VAC 5-80-110, 9 VAC 5-50-20 C, 9 VAC 5-50-260 and Condition 9 of 9/10/03 Permit)

75. Algae buildup on the rotameters used to measure the piccolo scrubber liquid flow rate prevented personnel from determining the scrubber liquid flow rate on the following dates: October 7, 2011, October 22, 2011, October 23, 2011, October 31, 2011, November 7, 2011, December 5, 2011, December 27, 2011, December 28, 2011, December 29, 2011, December 30, 2011, December 31, 2011, January, 1, 2012, January, 2, 2012, January 3, 2012, January 4, 2012, January 23, 2012, January 24, 2012, January 30, 2012, January 31, 2012, February 1, 2012, February 2, 2012, February 3, 2012, February 4, 2012, February 11, 2012, February 13, 2012, March 11, 2012, March 12, 2012, and March 20, 2012.

76. The Facility violated Condition VII.B.4. of its Title V permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), with respect to its monitoring of scrubber liquid flow rate of the piccolo scrubber.

COUNT X (TITLE V PERMIT-INCINERATORS)

77. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

78. Condition IX. (Process Equipment Requirements – RCRA Hazardous Waste

Incinerators) B. (Monitoring) 1.provides: The permittee shall comply with the operating requirements and operating parameter limits specified in the September 29, 2003 or most current Documentation of Compliance prepared pursuant to 40 CFR 63, Subpart EEE, Section 63.1211; with the operating requirements and operating parameter limits specified in the Notification of Compliance prepared pursuant to 40 CFR 63, Subpart EEE, Section 63.1210; and with monitoring requirements in accordance with 40 CFR 63, Subpart EEE, Section 63.1209. (9 VAC 5-80-110 and 9 VAC 5-60-100)

79. At the time of the 2011 EPA Inspection, the Facility was operating Incinerators 440 and 441.

80. 40 C.F.R. § 63.1209(j) – (o) establishes limits for certain operating parameters for incinerators, including minimum combustion chamber temperature (which would include the kiln combustion chamber and the afterburner combustion chamber), maximum flue gas flowrate, and minimum scrubber water flow rate.

81. Appendix C to this CAFO lists those instances where the Facility did not comply with the requirements of 40 C.F.R. § 63.1209(j) – (o).

82. The Facility violated Condition IX.B.1 of its Title V permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), for those instances referenced in Paragraph 81, above, where the Facility's incinerators did not meet the requirements of 40 C.F.R. § 63.1209(j) – (o).

CIVIL PENALTY

83. Respondents consent to the assessment of a civil penalty of Two Hundred Three Thousand, Two Hundred Dollars ($203,200.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above ten counts of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay the civil penalty no later than **SIXTY (60)** calendar days after the effective date of this CAFO.

84. For the violations alleged in Counts I - III, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* ("DCIA"), as set forth in 40 C.F.R. Part 19, and the December 29, 2008 memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary*

Penalty Inflation Adjustment Rule (Effective January 12, 2009) ("2008 Nakayama Memorandum").

85. For the violations alleged in Counts IV - V, EPA considered a number of factors, including, but not limited to, the statutory factors of the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require as provided in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). EPA has also considered the *Interim Clean Water Act Settlement Policy* (March 1, 1995), the DCIA and the 2008 Nakayama Memorandum.

86. For the violation alleged in Count VI, EPA has considered a number of factors, including, but not limited to the statutory factors of the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require as provided in Section 109 of CERCLA 42 U.S.C. § 9609. In addition, EPA considered its *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), the DCIA and the 2008 Nakayama Memorandum.

87. For the violations alleged in Counts VII - X, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require. EPA also considered the *Clean Air Act Stationary Source Civil Penalty Policy* (1991), the DCIA and the 2008 Nakayama Memorandum.

88. Payment of the civil penalty in the amount of $187,200.00, in satisfaction of Counts I through V and VII through IX of this CAFO, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

    a. All payments shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, **CAA/CWA/CERC/RCRA-03-2017-0164**;

b. All checks shall be made payable to "**United States Treasury**;"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fine and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Customer service contact: 513-487-2091

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

https://www.epa.gov/financial/makepayment

89. Payment of the civil penalty in the amount of $16,000.00, in satisfaction of Count VI of this CAFO, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

b. All payments shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, **CAA, CWA, CERC, RCRA-03-2017-0164**;

b. All checks shall be made payable to "**EPA-Hazardous Substances Superfund**;"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency

Fine and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Customer service contact: 513-487-2885

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

Additional payment guidance is available at:

https://www.epa.gov/financial/makepayment

90. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

Daniel L. Isales (3RC60)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

91. In the event that the payments required by Paragraphs 88 and 89 are not made within sixty (60) calendar days from the effective date of this CAFO, interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a

charge to cover the costs of processing and handling a delinquent claim shall be managed in accordance with 31 U.S.C. § 3717, Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 40 C.F.R. § 13.11. The Army disputes EPA's authority to impose interest charges on a federal agency and reserves its right to dispute any imposition of interest by EPA.

EFFECT OF SETTLEMENT

92. Payment of the penalty specified in Paragraph 83, above, in the manner set forth in Paragraphs 88 and 89, above, and compliance with all other terms of this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Subtitle C, the CWA, the CERCLA, and the CAA for the specific violations alleged in Counts I - X, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

93. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the CWA, the CERCLA, the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

94. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008 of the RCRA, 42 U.S.C. § 6928, Section 309 of the CWA, 33 U.S.C. § 1319, Section 109 of the CERCLA, 42 U.S.C. § 9609, and Section 113 of the CAA, 42 U.S.C. § 7413, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

ANTIDEFICIENCY ACT

95. Failure to obtain adequate funds or appropriations from Congress does not release the Army from its obligation to comply with the RCRA, the CWA, the CERCLA and the CAA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

AUTHORITY TO BIND THE PARTIES

96. The undersigned representatives of Respondents certify that each is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondents to it.

PUBLIC NOTICE

97. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate official.

EFFECTIVE DATE

98. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective 30 days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

In the Matter of: Radford Army Ammunition Plant
Docket No. CAA/CWA/CERC/RCRA-03-2017-0164

For Respondent: The United States Department of the Army

Date

James H. Scott III
Lieutenant Colonel, U.S. Army
Commanding

In the Matter of: Radford Army Ammunition Plant
Docket No. CAA/CWA/CERC/RCRA-03-2017-0164

For Respondent: Alliant Techsystems Operations LLC

_____ _____

Date Michael Anthony Miano
Sr. Director, Operations
Alliant Techsystems Operations LLC

In the Matter of: Radford Army Ammunition Plant
Docket No. CAA/CWA/CERC/RCRA-03-2017-0164

For Complainant: U.S. Environmental Protection Agency, Region III

_____ _____

Date Daniel L. Isales
Assistant Regional Counsel
U.S. EPA - Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

_____ _____

Date Samantha P. Beers, Director
Office of Enforcement, Compliance, and Environmental Justice
U.S. EPA - Region III